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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|-------------------|
| 10/666,624 | 09/17/2003 | Allen Licht | 2182.007 | 9237 |
| 21917 | 7590 | 07/02/2004 | EXAMINER | |
| MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410 | | | | GILBERT, SAMUEL G |
| ART UNIT | | PAPER NUMBER | | |
| | | 3736 | | |

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/666,624 | LICHT ET AL. |
| | Examiner Samuel G Gilbert | Art Unit 3736 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on _____. *[Signature]*

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-4 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-4 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 17 September 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>12/24/2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 12/24/2003 has been considered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Licht et al (6,428,466) in view of Risch et al (5,540651). Licht et al teaches a device as claimed but does not teach a heat exchanger. The prior art shows a plurality of hydrotherapy devices including heating means to maintain the therapeutic water at a comfortable level for the user. One example is Risch et al who teaches heat exchanger -44- in fluid communication with reservoir -16-, fan -114- to cool the heat exchanger, control circuit -50- and hand held controller -54- allowing the user to control the temperature of the water. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a heat exchanger as taught by Risch et al with the device of Licht et al to provide for user control of the water temperature as taught by Risch et al.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 5,441,529; 4,976,256; 6,210351; and 6,702,767 teach related therapy devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G Gilbert whose telephone number is 703-308-3553. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mary Beth Jones can be reached on 703-308-3400. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G Gilbert
Primary Examiner
Art Unit 3736

sgg